v. *Starkweather*, 1 Den. 113. An exception to this general rule is illustrated by a late case decided in the Supreme Court of Canada. The plaintiff let lands to the defendant under a lease for eleven months, at a rent of $600 per year, payable monthly. The defendant held over for ten months after the end of his lease, paying the former monthly rent, and then left after a month's notice. It was held that the defendant became a tenant from month to month and not from year to year, and so was liable for no further rent. *Chase* v. *Richards*, Canadian Law Journal, April 15, 1899.

This decision evidently attained practical justice, and it seems also to be correct on principle. The test of whether the tenancy was from month to month or from year to year would seem to depend on what was the implied agreement on holding over. And it is well settled that a tenant, in so holding over is impliedly bound by the agreements of his first lease, so far as they are consistent with the new tenure. Hence in all jurisdictions, even where tenancies from year to year are not allowed, the rent due under the former lease is binding on the tenant until a new agreement is substituted, whether he becomes a tenant from year to year or at will. *Weston* v. *Weston*, 102 Mass. 514. The principal case would seem to turn on what would have been the nature of the tenancy if the defendant had entered for an indefinite time with the agreement to pay rent monthly at the rate of $600 per year, and it seems probable that this would not have been a tenancy from year to year. While it is not necessary in order to create such a tenure that rent should be payable yearly, it should be apparent that the parties contracted with the year as the unit of payment. Hence it is created if an annual rent is payable half yearly, or quarterly, as this implies that the tenancy was intended to last for a year at the least. *Richardson* v. *Langridge*, 4 Taun. 128. In the principal case, the rent, though at the rate of $600 per year, can hardly be called an annual one, as it was not payable yearly or in any fractional part of a year. The defendant was, therefore, a tenant from month to month, and in such a case a month's notice is sufficient. *Steffens* v. *Earl*, 11 Vroom 128 (N. J.). The decision is especially worthy of notice as showing a reaction against a tendency of the courts to imply tenancies from year to year in many cases contrary to the manifest intention of the parties. See *Haynes* v. *Aldrich*, 133 N. Y. 287.

DEPOSIT OF NOTES FOR COLLECTION AND EQUITABLE ASSIGNMENTS. — The distinction between a trust and a debt is well illustrated by cases where a negotiable paper has been deposited in a bank for collection. If the transaction is a simple deposit and not a discount, the bank holds the paper in trust for the depositor until collection, and then becomes a debtor for the amount collected. The practical result of this change in the bank's obligation to the depositor is, that in the event of bankruptcy, the latter can recover the note from the bank before it has been collected, but after collection he must come in with the general creditors. *National Bank* v. *Hubbell*, 117 N. Y. 384; *St. Louis Co.* v. *Johnston*, 133 U. S. 566.

A somewhat peculiar situation arises where the bank gives a check on a second bank for the amount collected, and then becomes bankrupt before the check is honored. Since the payee or a check has no direct claim against the drawee bank the depositor is still only a creditor of the collecting bank, and has no preferred claim to the deposit against which

the check was drawn. *First National Bank* v. *Whitman*, 94 U. S. 343. The debt has not been extinguished but merely suspended, and the depositor must take his dividend with the other creditors. The courts, however, do not seem to favor this result and have escaped it by raising the doctrine of equitable assignment or equitable lien. An agreement between the depositor and the collecting bank is implied to the effect that the depositor shall have an equitable lien on the deposit in the second bank. The nature of this lien seems to be either that the collecting bank declares itself a trustee of the debt due from the drawee bank, or that there is a partial assignment of this debt. Undoubtedly such a transaction is possible, and would attain the desired result, but it seems that such an agreement is a fiction. If made in contemplation of bankruptcy it would probably be void as against creditors, and if made in the ordinary course of business can hardly be implied by the mere giving of a check. Nevertheless the depositor has been preferred on this ground. *Fourth St. National Bank* v. *Yardley*, 165 U. S. 634.

A recent case on this point, decided in the U. S. Circuit Court of Pennsylvania is *National Union Bank* v. *Earle*, New York Law Journal, April 19, 1899. The plaintiff employed the defendant to collect a note, and received in payment a check against a second bank. This check was collected, but owing to a rule of the Clearing House the plaintiff repaid the money to the drawee bank, which paid it to the defendant. The plaintiff was allowed to recover the money from the defendant as a preferred creditor. The court placed its decision on two grounds, first, that there had been an equitable assignment; and secondly, that the rule of the Clearing House was not intended to have the same effect as if the check had never been collected, but merely to put the money in a safe place until it should appear who was best entitled to it. On this interpretation of the facts the case is undoubtedly correct, for the plaintiff had merely to prove his good faith to become entitled to the money. On the payment of the check he was no longer a creditor of defendant, and the money, having returned to the latter without any right in him to call for it, was held in trust for the person best entitled. The case is also interesting as showing a decided approval of the doctrine of equitable assignment, — which, though open to criticism for the reasons given above, seems to be fairly settled.

JUDICIAL INITIATIVE. — The power of a trial justice to influence a jury is a dangerous one, — when, either consciously or unconsciously, he so conducts himself as to influence the result of the trial, to lead the jury to a conclusion, there is strong reason for holding that a new trial should be allowed. In *Bolte* v. *Third Ave. Ry. Co.*, 56 N. Y. Supp. 1038 (Sup. Ct., App. Div., First Dept.), this was the actual course adopted. The action was brought for personal injuries sustained by the plaintiff through carelessness of defendant's servants. During the proceedings the trial justice took it upon himself to develop the plaintiff's case by asking his witnesses many questions which would have been objectionable if asked by the counsel for the plaintiff. The defendant's exceptions were overruled and judgment was given for the plaintiff. On appeal, the court above not only reversed the order, but further said that even if no exception had been taken, the mere fact of the extreme exercise of judicial power in taking such initiative would have been sufficient to warrant reversal.